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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1959

No. 453

MRS. CLAUDIA WALKER,

Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION and TRANSAMERICA CORPORATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT TRANSAMERICA CORPORATION IN OPPOSITION

CHRISTOPHER M. JENKS,

Counsel for Respondent Transamerica Corporation

OLNEY, DAVIS, POST, HERRINGTON & SCHMIDT,

Of Counsel.

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OPINIONS BELOW

The opinion of the District Court was not reported. The opinion of the Court of Appeals for the Ninth Circuit is reported in 268 F.2d 16 and is reprinted in the appendices to the briefs of petitioner and re-

spondent Bank of America National Trust and Savings Association.

JURISDICTION

Although petitioner has stated in her petition that jurisdiction of this Court is invoked under 28 U.S.C. §1251(1), we think she means 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

Petitioner has listed eight questions in her petition. Most of these questions relate primarily, if not entirely, to petitioner's supposed claim against Bank of America. Nevertheless, the petition taken as a whole and liberally construed might be deemed to raise two "questions" which relate to this respondent. The first is: Does a defendant lose the right to raise the defenses of lack of jurisdiction of the subject matter and failure to state a claim where the defendant fails to plead within twenty days of the service of the complaint, but does obtain an extension of time from the Court within the twenty-day period and files the motion within the time extended by the Court? The second is: Does the three-year California statute of limitations bar a claim for fraud where the complaint unequivocally shows on its face that the claim was discovered by the plaintiff more than seven years before the action was filed? The remaining questions have to do with national banks, and Transamerica is not a national bank.

STATUTES INVOLVED

California Code of Civil Procedure, §335:

"The periods prescribed for the commencement of actions other than for the recovery of real property are as follows:"

California Code of Civil Procedure, §338:

"Within three years:

". . . .

"4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

". . . ."

STATEMENT OF THE CASE

The complaint in this case was filed October 24, 1955, although the controversy had its origin in 1939, when petitioner's mother had her "committed to the Stockton State Hospital". *In re Walker*, 32 Cal.2d 488, 490. Petitioner claims that the ailment upon which the commitment was based was caused by the conditions of her employment with Transamerica and Bank of America (Complaint, para. IX [at p. 9]) and that she should have been allowed workmen's compensation. Complaint, para. V. She alleges that Transamerica and Bank of America failed to disclose to her the fact that she was entitled to workmen's compensation, and that she did not learn of her rights until 1948. Petitioner concludes that the non-disclosure of her alleged rights constituted fraud.

Petitioner admits that she filed a claim with the California Industrial Accident Commission which was denied in 1949 and that this denial was affirmed without opinion by the California Supreme Court. Complaint, para. X (at pp. 23-24); [Second] Amendment to Complaint, para. XXII (at p. 13). Petitioner attempts to avoid the bar of the statute of limitations by alleging that, although she knew of her claim in 1948 (Complaint, para. X (at p. 23)), she did not have the evidence to support it until 1953. Complaint, para. IV.

Although only Transamerica and Bank of America were joined in this action, the complaint is replete with alleged acts by others, including Stanford-Lane Hospital, judges of California courts, a former governor of California, a former district attorney of San Francisco, a former United States attorney in San Francisco, her former physician, her former lawyer, and J. Edgar Hoover. Complaint, para. X.

The original complaint attempted to use diversity of citizenship as the basis for jurisdiction, although Bank of America is a national banking association located in California, and petitioner is a citizen of California. Complaint, para. III. Transamerica is a Delaware corporation. Complaint, para. III. Shortly after filing the original complaint, petitioner filed an amendment claiming jurisdiction under a civil rights statute (42 U.S.C. 1985 (3)), which applies to conspiracies to deprive persons of equal protection of the laws. [First] Amendment to Complaint, para. XV.

Before twenty days had elapsed from the service of the original complaint, we secured an extension of time from the District Court within which to plead or move. Within the extended period we filed a motion to dismiss. In response to the motion, the district judge filed an order on January 28, 1958, dismissing the action for lack of jurisdiction. Thereafter, petitioner filed various motions for additional relief, including a motion for leave to file a new complaint dropping Bank of America as a defendant. The district judge made a minor correction in one order, but, except for that, denied all of these subsequent motions and denied the request for permission to file the new complaint. The district judge pointed out in an order dated April 18, 1958, that it appeared on the face of the proposed complaint that petitioner's claim for relief was barred by the three-year statute of limitations, since petitioner admitted that she was aware of her claim in 1948 and did not file this action until October 24, 1955.

Petitioner appealed to the United States Court of Appeals for the Ninth Circuit, which upheld the decision of the District Court.

ARGUMENT

A. THE DECISION BELOW IS CLEARLY CORRECT

Petitioner tries to state two basic claims against this respondent, one for fraud and the other claim was for violation of a civil rights statute, 42 U.S.C. §1985(3).

The District Court and the Court of Appeals both held that petitioner failed to state a claim for violation of the civil rights statute. This was unquestionably correct. See *Collins* v. *Hardyman*, 341 U.S. 651. Even if petitioner could have stated a claim for violation of the civil rights statute, it would have been barred by the statute of limitations. See *O'Sullivan* v. *Felix*, 233 U.S. 318; *Wilson* v. *Hinman*, 172 F.2d 914 (10th Cir.); California Code of Civil Procedure, §§338(1), 338(4), 339(1), 343.

In any event, petitioner does not appear to make the Court of Appeals' decision regarding the civil rights statute one of the grounds of her petition. The result is that so far as respondent Transamerica is concerned, only the fraud claim is now involved.

The District Court and the Court of Appeals both held that the California statute of limitations governed with respect to the fraud claim. This was unquestionably correct. *Guaranty Trust Co.* v. *York*, 326 U.S. 99. The applicable California statute is Section 338(4) of the Code of Civil Procedure, providing a three-year period of limitations. Both courts below held that the statutory period began running in 1948 when petitioner, by her own admission in the complaint, first discovered her claim. This, also, was un-

questionably correct. *Lady Washington Consol. Co.* v. *Wood*, 113 Cal. 482, 45 Pac. 809.

Although respondents urged numerous other defenses to petitioner's complaint, it is not now necessary to consider any of them. The statute of limitations disposes of this case. It does so regardless of whether Bank of America is an indispensable party or not, and regardless of whether it must be deemed a citizen of California or not.

Petitioner's contention that the defenses of law to her complaint were not raised in time is likewise without merit. Within twenty days of the time we were served with the complaint, and before any pleading was due, we secured an extension of time within which to plead or move. Since our motion to dismiss was filed within the time extended by the District Court, there can be no question of our having waived any of our rights by failure to plead within twenty days of the service of the complaint. Moreover, lack of jurisdiction and failure to state a claim are never waived.

B. THERE IS NO CONFLICT OF DECISION

The cases which we have cited are controlling, and so far as we know there is no conflict with any other decisons, Federal or State.

CONCLUSION

The decision below was unquestionably correct, and there is no conflict of decision. For these reasons it is submitted that the Petition for Writ of Certiorari should be denied.

October 26, 1959.

Respectfully submitted,

CHRISTOPHER M. JENKS,
Counsel for Respondent
Transamerica Corporation.

ORRICK, DAHLQUIST, HERRINGTON & SUTCLIFFE,
Of Counsel.